



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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J. KLEINHAUS & SONS, LLC,

(phc)
Civ. No.: 07 CV 2625(PC)

Plaintiff,

-against-

D'ANNUNZIO & CO, LLC
D'ANNUNZIO & CO, INC.,
D'ANNUNZIO DISTRIBUTION, INC. and
PHILART, INC.

Defendants.
-----X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ALFRED MEYERS, INC.,

(phc)
Civ. No.: 07 CV 3254(PC)

Plaintiff,

-against-

D'ANNUNZIO & CO, LLC
D'ANNUNZIO & CO, INC.,
D'ANNUNZIO DISTRIBUTION, INC. and
PHILART, INC.

Defendants.
-----X

"Stipulation and Order of Settlement"

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties
and the parties that the above-captioned matters are hereby settled upon the following terms and

conditions:

1. In full settlement of all of plaintiffs' claims in both cases alleged against all defendants, defendants agree to pay the sum of one hundred sixty thousand (\$160,000.00) dollars (the "Settlement Amount").

2. The Settlement Amount shall be paid as follows:

(a) Sixty thousand (\$60,000) dollars on or before March 28, 2008.

(b) Fifty thousand (\$50,000) dollars on or before June 30, 2008.

(c) Fifty thousand (\$50,000) dollars on or before August 1, 2008.

Each installment of the Settlement Amount shall be paid by wire transfer or bank or certified check. If made by wire transfer, the funds shall be wired to the IOLA Account of Moss & Kalish, PLLC, Counselors at Law in accordance with wiring instructions to be provided by Moss & Kalish and annexed to this Stipulation as "Exhibit A". If made by certified or bank check, payment shall be made to the order of Moss & Kalish, PLLC Counselors at Law Attorney Trust Account, as attorneys, located at Moss & Kalish, PLLC, 122 East 42nd Street, New York, NY 10168-0098. Time shall be of the essence with respect to the dates on which payment of the installments shall be due.

3. In the event of a default by defendants in paying any of the installments due, and the failure of defendants to cure such default after five (5) days' written notice by plaintiffs to defendants or their counsel to counsel for the defendants (a) plaintiff, J. Kleinhaus & Sons, LLC, shall have the right to immediately enter, without any further notice, a judgment against defendants in the amount of One Hundred Thousand Seven Hundred Forty Seven (\$100,747.00) Dollars, together with simple interest and costs allowed by law accrued from the date of the full execution of this Stipulation, less any amount previously paid by defendants pursuant to the

terms of this Stipulation, and (b) plaintiff, Alfred Meyers, Inc., shall have the right to immediately enter, without any further notice, a judgment against defendants in the amount of Ninety Nine Thousand Seventy Two (\$99,072.00) Dollars, together with simple interest and costs allowed by law accrued from the date of the full execution of this Stipulation, less any amount previously paid by defendants pursuant to the terms of this Stipulation. For purposes of calculating the judgment amount which each plaintiff may enter, any payments made by defendants pursuant to this Stipulation prior to the entry of any judgment shall be deemed to have been made one-half to J. Kleinhaus & Sons, LLC. and one-half to Alfred Meyers, Inc. Notice pursuant to this paragraph shall be sufficient if given either by fax with a confirmation of the transmittal, hand delivery with receipt of delivery or by an over night mail service with tracking number addressed as follows:

Arthur D'Annunzio, President
D'Annunzio Distribution, Inc.
60 G Commerce Way
Totowa, NJ 07512
Facsimile: (973) 237-0444

With a copy simultaneously delivered to:

Paul F. Gregory, Esq.
Manuelbaum Salsburg, P.C.
155 Prospect Avenue
West Orange, NJ 07052
Facsimile: (973) 325-7467

4. From and after the date of the entry of any judgment against the defendants, defendants shall be liable to the plaintiffs for their actual attorney's fees and costs incurred in executing and collecting the judgments entered pursuant to this Stipulation, except any such attorney's fees and costs shall not exceed 15% of the total collected.

5. Upon defendants paying the final installment due under this Stipulation, the parties shall exchange mutual general releases in standard form, and the above-captioned actions shall be deemed dismissed and discontinued with prejudice.

6. It is understood and agreed that by entering into this Stipulation, the parties wish to avoid the time, cost and uncertainty of litigation by settling all matters relating to the parties' allegations in the above captioned matters and do not in any way admit or concede any wrongdoing on their part or that of their respective successors, affiliates, officers, directors, shareholders, representatives, heirs, predecessors, and assigns.

7. It is understood and agreed that J. Kleinhaus & Sons, LLC and Alfred Meyers, Inc. shall be solely, jointly, severally and completely responsible for payment of all state and federal taxes owed, if any, as a result of any payments made pursuant to this Stipulation. If any taxing authority makes a claim for taxes of any type or nature on the consideration paid pursuant to this Stipulation to which J. Kleinhaus & Sons, LLC and Alfred Meyers, Inc. would otherwise be responsible, J. Kleinhaus & Sons, LLC and Alfred Meyers, Inc. shall indemnify and hold defendants, their heirs, predecessors, and assigns harmless for any penalties, fines, liability or costs, including reasonable attorneys' fees, they may incur in connection with responding to any taxing authority's demand for the payment of taxes, penalties and/or fines related to the consideration paid pursuant to this Stipulation.

8. The parties agree that they will not disparage each other's business or personal reputations.

9. If any provision of this Stipulation is declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of the Stipulation in full force and effect.

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10. The parties have had ample opportunity to review and have, in fact, reviewed this Stipulation. To the extent the parties have chosen to do so, they have discussed the meaning and implications of signing this Stipulation with their attorneys and fully understand all of the provisions and effects of this Stipulation.

11. This Stipulation represents the complete understanding between the parties. No other promises, agreements, discussions or understandings have been made or relied upon by the parties to induce the execution of this Stipulation by them, except to the extent as set forth herein. No other promises, agreements, discussions or understandings shall be binding or shall modify the Stipulation.

12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

13. The parties agree that they shall submit this Stipulation to be "So Ordered" by the

Court. 14. The 4/8/08 PTC is cancelled. The Clerk of Court is
Dated: New York, New York directed to close this case.

March 26 2008

Moss & Kalish, PLLC, Counselors at Law

By Jan Schwartzman
Attorneys for Plaintiffs

J. KLEINHAUS & SONS, LLC

By Ellen Klein
Hay Kleiman

Mandelbaum, Salsburg, Gold, Lazris &
Disenza, P.C.

By Michael Cahill
Attorneys for the Defendants.

D'ANNUNZIO & CO, LLC

By Alto D'Annunzio President

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ALFRED MEYERS, INC.

By *James H. Meyer* Pres.

D'ANNUNZIO & CO., INC.

By *Alb. D'Annunzio* President

D'ANNUNZIO DISTRIBUTION, INC.

By *Alb. D'Annunzio* President

PHILART, INC.

By *Alb. D'Annunzio* President

SO ORDERED: MAR 27 2008

Paul A. Crotty
HON. PAULA A. CROTTY
UNITED STATES DISTRICT JUDGE